



United States  
Department of  
Agriculture

Food and  
Consumer  
Service

Mountain  
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MPCN-1

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Reply to: SP-96-15  
Attn of: CACFP-474  
SFSP-294

Subject: Suspension of Dairies - Additional Guidance

To: STATE AGENCY DIRECTORS - Colorado ED, Colorado DPHE, Colorado HS,  
(Child Nutrition Programs) Iowa, Kansas, Missouri ED, Missouri DH,  
Montana OPI, Montana DPHHS, Nebraska ED,  
Nebraska SS, North Dakota, South Dakota,  
Utah, Wyoming ED, Wyoming DHSS

In our Policy Memorandum of February 13, 1996 (SP 96-07; CACFP-458; SFSP-283), we informed State agencies of the suspension from participation in Federal nonprocurement programs including FCS programs, of Prairie Farms Dairy, Inc. and several of its affiliates. Since that time we have received several inquiries raising policy issues which we are addressing in this memorandum.

The basic policy for schools and institutions operating Child Nutrition (CN) Programs is: when procuring goods or services in the operation of CN Programs, all contracts expected to equal or exceed \$100,000 must be accompanied by a signed Form AD-1048 (2/89) "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions" (Certification Form). The Certification Form is required by 7 CFR §3017.510(b) and is to be completed by prospective bidders/offerors. It is a statement attesting to the fact that neither the prospective bidder/offeror nor any of its principals are presently suspended, debarred or otherwise ineligible to participate in Federal nonprocurement programs pursuant to action taken by any Federal department or agency.

Schools and institutions operating CN Programs may rely upon the Certification Form unless they know it to be erroneous.

There is another element of the Certification Form which is very significant. In signing the Certification Form, the prospective bidder/offeror is also agreeing, that should the contract be awarded to it, the bidder/offeror will



not enter into a Lower Tier Covered Transaction (a contract expected to equal or exceed \$100,000) with any suspended, debarred or otherwise ineligible person or entity to acquire goods or services to be used in fulfillment of the contract. This means that a dairy distributor cannot provide a valid Certification Form to a school or institution if the distributor expects to enter into a Lower Tier Covered Transaction with a suspended, debarred or otherwise ineligible person or entity in order to acquire the dairy products for the contract with the school or institution.

Following are some questions which have been submitted to our office and answers which should help clarify the above policies:

Question 1. A dairy distributor has informed a school district that the distributor gets all of its dairy products from a suspended dairy. However, the products the distributor purchases are used to service many customers such as hospitals, universities, and other institutions, as well as the school district. As a result the distributor expects to purchase several million dollars worth of dairy products from the suspended dairy next year. The school district's contract with the distributor is expected to equal or exceed \$200,000 next year. Can the distributor provide the district a valid Certification Form?

Answer: No. The only way the distributor can provide a valid Certification Form is if the distributor intends to purchase the dairy products to fulfill its contract with the district from an eligible source. In this case, the distributor's sole source is an ineligible dairy.

Question 2. This year a school district has a dairy contract with a dairy which is at least partially owned by a joint venture between a suspended dairy and another second dairy. If the dairy currently supplying the school district submits the best bid again this year, can the district enter into a Lower Tier Covered Transaction with the dairy?

Answer: Since the contract is a Lower Tier Covered Transaction (expected to equal or exceed \$100,000) the district must get the Certification Form from the prospective bidder/offeror. If there is some question as to whether or not the Certification Form is erroneous due to the ownership of the dairy, the district should contact the State agency for guidance. State agencies in turn should contact the Regional Office if there is still some uncertainty about the accuracy of the Certification.

Question 3. This year a school district's dairy contract with a suspended dairy, entered into prior to the that dairy's suspension, totals \$150,000. Can the district bid two contracts next year, one for the first semester and one for the second semester? Since neither contract would be expected to equal or exceed \$100,000 and therefore no Certification Form must be submitted, can the district contract with the suspended dairy for each semester's dairy products?

Answer: No. Schools and institutions may not subdivide contracts solely to reduce the size of a contract to less than \$100,000. However, if the contracts have traditionally been bid on a semester basis, the practice may continue and the \$100,000 limit would apply to each.

Question 4. A State has a centralized purchasing office that issues procurement actions, including the procurement of dairy products, for a wide variety of State institutions such as hospitals, prisons, universities, etc. Of several dozen institutions, only three residential child care institutions (RCCIs) administer CN Programs. Although the contract will be between the winning bidder/offeror and the State purchasing office, it will be administered by the individual institutions through their individual ordering and payment procedures. The overall contract will amount to well over \$100,000. The three RCCIs' contracts collectively will also total over \$100,000 but individually the three RCCIs' contracts will each be under \$100,000. Must the State purchasing office require completion of the Certification Form from prospective bidders?

Answer: Yes, if the bid solicitation requires prospective bidders/offerors to service all of the institutions, it is a single transaction and would be considered a Lower Tier Covered Transaction requiring the completion of the Certification Form.

However, if the bid solicitation permits prospective bidders/offerors to individually select the institution(s) it wishes to bid, then the overall process is in fact a series of individual bids/offers, each of which would be separately determined to be or not to be a Lower Tier Covered Transaction depending on the amount of each institution's expected purchases.

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